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JUN 10 1994  
FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Implementation of ) MM Docket No. 94-34  
Commission's Equal )  
Employment Opportunity Rules )  
To: The Commission )

COMMENTS ON NOTICE OF INQUIRY

John A. Bulmer<sup>1</sup>, ("Bulmer") by his attorney, hereby submits his comments on the Notice of Inquiry ("NOI") issued in the above-referenced proceeding, 9 FCC Rcd 2047 (1994).

The NOI requests, inter alia,

comment on the effect and operations of the equal employment opportunity amendments made by the 1992 Cable Act and on the general effectiveness of the Commission's rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity in the cable, broadcast and other industries in order to assist the Commission in complying with Section 22(g) of the 1992 Cable Act. Id. ¶ 12

including

ways the Commission can better enable broadcasters to meet their EEO obligations, Id. ¶ 21

and,

a way to decrease any administrative burdens placed on broadcasters by the Commission without decreasing the effectiveness of [its] broadcast EEO enforcement Id. ¶ 26

Bulmer's comments focus on the Commission's criteria for

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<sup>1</sup> Bulmer is the 100% voting shareholder of Bulmer Communications of Findlay, Inc., licensee of station WHMQ(FM) North Baltimore, Ohio; Bulmer Communications of Logansport, Inc., licensee of WHZR(FM) Royal Center, Indiana; and, Bulmer Communications of Ashtabula, Inc., licensee of WZOO(FM) Edgewood, Ohio.

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determining a broadcast station's "location" for purposes of comparing EEO performance to selected labor force data, and the administrative burdens placed on broadcasters commensurate with that policy. Secondly, he addresses a proposal which would require broadcast permittees and licensees to conduct a certain percentage of their business with minority and female owned or controlled businesses.

The Commission interprets Section 73.1120 of its rules such that a station's "location" is its community of license. In assessing a station's compliance with the EEO rules, Section 73.2080, the Commission uses U.S. Census Bureau labor force data from the Metropolitan Statistical Area ("MSA") in which the station is "located", pursuant to Section 73.1120 or, when the station is outside of an MSA, the county in which the station is located. In re Michigan and Ohio Renewals 3 FCC Rcd 6944, 65 RR 2d 966 (1988). Footnote 12, however, indicates that when a station voluntarily moves its main studio location from its community of license to an area of higher minority concentration, the Commission reserves the right to "take cognizance of that fact in assessing the adequacy of its overall EEO efforts." A station may be analyzed against alternative labor force data only when it presents a reasoned explanation for its use. Id.

The standard for an alternative labor force has three parts: distance of the station from areas with significant

minority population in the MSA, commuting difficulties, and the lack of success of previous minority recruitment efforts from such areas, i.e., that the licensee was unable to obtain qualified applicants from areas of minority concentration despite "extensive recruitment involving use of minority referral sources." Buckley Broadcasting Corp. 9 FCC Rcd 2099 ¶ 17 (1994).

The policy of equating a station's "location" with its city of license for purposes of Section 73.2080 is arbitrary and legalistic, and presents unwarranted administrative burdens. As discussed below, the MSA or county containing the city of license does not necessarily have a bearing on the location of a station's employment center. In addition, the alternative labor force data standard cannot be applied fairly or equitably to all broadcasters and is, therefore, an arbitrary, unreasonable burden which detracts from the resources and attention which might be devoted to an otherwise acceptable EEO program.

When the Commission revised Sections 73.1120 and 73.1125 of its rules governing main studio and station location, it recognized that the role of a main studio was no longer central to production of the station's programming, for current technology enables stations to be programmed to meet the needs of its listening audience from distant locations. Also, the Commission recognized that competitive marketplace

forces play a large role in the type and source of programming material, and that improvements in telephone and highway systems have eliminated the need for a studio to be physically accessible to residents of the community of license. Thus, the Commission eliminated the requirement that a main studio be located within the community of license. It now permits the main studio to be located anywhere within the principal community contour. Main Studio and Program Origination Rules (Report and Order) 2 FCC Rcd 3215 (1987).

Moreover, the Commission eliminated the requirement that a station originate a majority of programming from its main studio. Under the present rules, the main studio need only have the capability of originating programming and may be staffed by as few as one full-time management level employee and one part-time employee. The rest of its employees may be located elsewhere. Jones Eastern of the Outer Banks 7 FCC Rcd 6800 (1992).

Depending on the size of a station's principal community contour, the main studio may be located many miles from the principal community of license, county of license, and even its MSA of license, if any. For example, in the Main Studio Rules proceeding, the Commission found that the revised rule would allow many stations "to relocate their main studios to any point within 20 miles of their transmitter." Under this realization, a community of license could be located 20 miles

to the north of a transmitter, with the main studio located 20 miles to the south for a total separation distance of 40 miles and still fulfill its local programming requirements. This distance could easily place the studio outside the county or MSA of the city of license. There is no rational basis why, if a station has no employment presence in such a county or MSA, a station must be held to employment standards as if its employment center is within that principal community's MSA county.

It is a more logical and evenly-applied for the Commission to define a station's "location" for Section 73.2080 purposes as the place(s) where the station has a significant employment presence.<sup>2</sup> A station's "location", for employment purposes, naturally flows to the place(s) where it maintains personnel. This furthers the public interest factors inherent in allowing a licensee discretion on where to locate its main studio, and does not require a station to respond to or recruit from a distant labor force. Of course, the reciprocal scenario is equally appropriate. When a station elects to have a significant employment presence at a main studio, an auxiliary studio, a sales office, a production facility, a press/public affairs or other office at a location or locations within an area with a cognizable minority labor force, it chooses to participate in that local economy and should

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<sup>2</sup> For example, five or more full time employees.

respond to local labor force data. See e.g., In re Michigan, supra, n. 12.

For example, FM Station WBYR is licensed to Van Wert, Ohio, in Van Wert County, yet its transmitter site is in Indiana and its studios are in Ft. Wayne, Indiana, and Allen County. 1990 labor force census data available from the Commission shows that Van Wert County, with an aggregate minority labor force of 2.7%, is located outside of the Ft. Wayne MSA. The Ft. Wayne MSA has an aggregate labor force of 9.6%, and Allen County alone (home to Ft. Wayne) has a minority labor force of 11.3%. It makes sense that WBYR should be required for EEO purposes to recruit in relationship to the Ft. Wayne MSA labor force where it has its employment presence rather than Van Wert, where the minority labor force is far less than 5%.

Forcing a station to expend time, money, and effort in a futile attempt to recruit from a labor force in which it has an insignificant or no employment presence merely places form over substance. The alternative labor force standard does not truly take distance factor into account, because it requires a licensee to recruit extensively from the labor force applicable to the community of license, a labor force which may have absolutely no bearing on how the station is staffed, the area where it has an employment presence, or the true distribution of the minority labor force for the area from

which it is likely to attract prospective employees.

Under the current procedures, the station is faced with the onerous task of extensive recruitment<sup>3</sup> in a community which may be 40 or more miles away, perhaps in a different county or MSA and with no direct business tie to the studio location. If the station succeeds in recruiting even one minority person, it will have established a precedent that such recruiting is possible, even though this one instance may have been unique, and the station will be required to recruit from the MSA for the future.

A labor force which has chosen to live in a certain community, county, MSA etc., has chosen such a geographical area presumably for personal reasons. This is particularly true for those who prefer or require an urban lifestyle. Relocating outside of such an area is not always an acceptable option.

Salaries available outside of an urban area are typically not in line with the income needed to subsist in that urban area. Hence, employees are often unwilling or unable to commute from an urban area. It is far more common for those living in rural or urban settings to commute to urban areas for the urban-scaled salary and other benefits.

To require a station which, in furtherance of the public

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<sup>3</sup> This extensive recruitment creates a tremendous drain on station resources which might otherwise be available for higher employment compensation, or local programming efforts.

interest, has elected to base its operation and locate its staff outside of a county or MSA of license, to attempt to recruit potential employees away from that area surely does not further the goals of the EEO rules. It merely increases greatly the resources and effort required for recruitment because the station must look to both a distant and local labor force in order to further a connection with the local population.

For example, station WHMQ(FM) is licensed to North Baltimore, Ohio, at the southern edge of Wood County, 30 miles south of Toledo, and just within the southern most boundary of the Toledo, Ohio, MSA. The station's main studios are located in Findlay, Ohio, and Hancock, County, approximately 8 miles south of North Baltimore, 38 miles south of Toledo, and beyond the boundary of the Toledo MSA. The WHMQ 70 dBu contour serves only the southern fringe of the MSA. The entire WHMQ staff is located in Findlay; the station maintains no auxiliary studio or satellite office. Findlay is a sizable community situated at the confluence of highways leading from Dayton and Columbus to Toledo. It is the county seat for Hancock County, and a natural hub of commerce for that area. The minority labor force of Hancock County is 3.8%.

The minority labor force in the Toledo MSA is concentrated in the Toledo area, not in Wood nor any other MSA counties. 1990 census figures show that the MSA (consisting



of Lucas, Fulton & Wood counties) consists of a 12.2% minority labor force in the aggregate. The individual minority labor force of Lucas county (home to the city of Toledo) is 15.1%, whereas the figure for Wood is 4.0% and Fulton is 4.2%, both well below the threshold 5% aggregate minority labor force.

Given its geographic location deep within Wood county, and its proximity to Hancock county, North Baltimore has a stronger relationship with nearby Findlay than with Toledo, 30 miles to the north. Toledo is well beyond the reasonable hiring zone for a North Baltimore station with all of its employees in Findlay. It is unduly burdensome to require a station, such as WHMQ, to seek employees from the Toledo area when it has no significant relationship with that area, and its employment center is beyond the Toledo MSA.

Accordingly, the Commission should define a station's "location" for EEO purposes as that geographical place (or places) where the station employs five or more full time people. To do otherwise places an unreasonable burden on the station's recruiting requirements.

In a related matter, the Commission is believed to be considering requiring broadcast permittees and licensees to conduct a certain percentage of their business with minority and female owned or controlled businesses. Bulmer is against this proposal. As a small business owner he does not have the resources which would be required to seek out those businesses

which are owned or controlled by minorities and women.

The vast majority of equipment and supplies needed for Bulmer's stations are purchased "as needed" with regard to such market driven factors as price, quality, availability and convenience. These factors take time and effort to research and assess. Major equipment purchases are often done on an emergency basis. It would create a tremendous and inequitable administrative burden to require small business owners, such as Bulmer, to research a company's ownership structure for the relatively small amount of purchasing required or on an emergency basis. In addition, given the small minority population in the vicinity of WHMQ, for example, Bulmer would most likely be required to seek vendors from outside of the market to conduct such purchases. This would lead to additional administrative burdens as well as alienate local business owners on which stations like WHMQ rely for advertising revenue to support local programming. This would be against the public interest.

Respectfully Submitted,

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By

  
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June 10, 1994

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